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Application No. 01 988 298.4 - 1238	Ref. P709174EP-PCT	Date 19.03.2009
Applicant Proficient Systems, Inc.		

Communication pursuant to Article 94(3) EPC

The examination of the above-identified application has revealed that it does not meet the requirements of the European Patent Convention for the reasons enclosed herewith. If the deficiencies indicated are not rectified the application may be refused pursuant to Article 97(2) EPC.

You are invited to file your observations and insofar as the deficiencies are such as to be rectifiable, to correct the indicated deficiencies within a period

of 4 months

from the notification of this communication, this period being computed in accordance with Rules 126(2) and 131(2) and (4) EPC. One set of amendments to the description, claims and drawings is to be filed within the said period on separate sheets (R. 50(1) EPC).

Failure to comply with this invitation in due time will result in the application being deemed to be withdrawn (Art. 94(4) EPC).



Guenov, Mihail
Primary Examiner
For the Examining Division

Enclosure(s): 4 page/s reasons (Form 2906)

The examination is being carried out on the **following application documents:**

Description, Pages

1-38 as published

Claims, Numbers

1-10 filed with entry into the regional phase before the EPO

Drawings, Sheets

1/10-10/10 as published

1 Compliance of amendments - Article 123(2) EPC

1.1 The amendments filed on entry into the regional phase before the EPO (claims 1-10) appear to comply with the requirements of Article 123(2) EPC. The following passages of the originally filed (published PCT application) provide basis for the above-mentioned amendments: (p. 20-28 I. 2; fig.1; claims).

2 Clarity - Article 84 EPC

2.1 The present application contravenes Article 84 EPC for the following reasons:

2.2 The statement in the description on page 38 I. 5-8 implies that the subject-matter for which protection is sought may be different to that defined by the claims, thereby resulting in a lack of clarity of the claims (Article 84 EPC) when the description is used to interpret the claims (see Guidelines C-III, 4.4). This statement should therefore be amended to remove this inconsistency.

3 Inventive step - Article 52(1) and 56 EPC

3.1 The present application does not meet the requirements of Article 52(1) EPC because the subject-matter of claims 1-10 does not involve an inventive step within the meaning of Article 56 EPC.

3.2 The subject-matter of claims 1-10 relates to a method for referring customers located at a geographically remote location to sales associates based on certain parameters some of which relate to the desired products.

3.3 However, the concept of using product and other parameters to refer customers to

specific sales associates is deemed to come from the business/administrative - and not technical - motivation to provide better customer service.

- 3.4 Therefore, the subject-matter of claims 1-10 represents a mere automation of a business scheme. The person skilled in the art, made aware of the business method, guided by the constraints implied by this method, would implement it without the exercise of an inventive activity. No technical problem has been convincingly laid out and none is apparent to the person skilled in the art from reading the current application. Therefore, the problem dealt with is non-technical.
- 3.5 The only technical aspect that is present is the use of a computer system for implementing the basic business task. However, the feature of executing this method on a computer system does not go beyond the basic computer functions associated with the implementation of any business activity on a computer system which are standard technology and form part of the common general knowledge of the person skilled in the art. When analysing the application, the examiner was unable to discover any technical details of the implementation of this business system that go beyond mentioning at a very high level a computer system, a network infrastructure, processing business data and the implementation of a business method using well-known software techniques.
- 3.6 The technical features of the implementation follow directly from the requirement of the specification concerning how to make the recommendation more efficient, i.e the business mechanism renders necessary the implementation of:
- a general purpose computer with data processing capabilities and network connectivity;
 - general purpose client computers with corresponding software;
 - a network;
 - a database;
- 3.7 Any technical considerations which might be involved in implementing the business scheme on a computer system either derive in a straightforward way from the specification of the underlying business method or relate to well-known implementation choices. This is in particular true since there is no hint in the application that the skilled person would need more than ordinary skills for the

implementation of the business method on the known computer system. It is also noted that no further technical effect can be seen in the implementation of this business method.

- 3.8 It is therefore considered that the person skilled in the art, with general knowledge of the technical field and normal access to examples and textbooks, would apply the measures as described in the present application without the use of inventive skill to arrive at the desired result. Consequently, the subject-matter of claims 1-10 does not involve an inventive step and does not satisfy the criterion set forth in Articles 52(1) and 56 EPC.

4 General

- 4.1 It is not at present apparent which part of the application could serve as a basis for a new, allowable claim. Should the applicant nevertheless regard some particular matter as patentable, an independent claim should be filed taking account of Rule 43(1) EPC. The applicant should also indicate in the letter of reply the difference of the subject-matter of the new claim vis-à-vis the state of the art and the significance thereof.
- 4.2 When filing amendments to take into account the above, the applicant should also bear the following in consideration:
- 4.3 The attention of the applicant is drawn to the fact that the application may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC). Any information the Applicant may wish to submit concerning the subject-matter of the invention, for example further details of its advantages or of the problem it solves, and for which there is no basis in the application as filed, should be confined to that letter of reply rather than be incorporated into the application, cf. the Guidelines C-VI, 5.3.4-5.3.8.
- 4.4 When filing amended claims the applicant should at the same time bring the description into conformity with the amended claims. Care should be taken during revision, especially of the introductory portion and any statements of problem or advantage, not to add subject-matter which extends beyond the content of the

application as originally filed (Article 123(2) EPC).

- 4.5 In order to facilitate the examination of the conformity of the amended application with the requirements of Article 123(2) EPC, the applicant is requested to clearly identify the amendments carried out, irrespective of whether they concern amendments by addition, replacement or deletion, and to indicate the passages of the application as filed on which these amendments are based. If the applicant regards it as appropriate these indications could be submitted in handwritten form on a copy of the relevant parts of the application as filed.